UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-7133

RUSSELL LEE GAINEY,

Plaintiff - Appellant,

versus

RONALD ANGELONE, Director, Virginia Department
of Corrections,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, District Judge.
(CA-97-65-R)

Submitted: October 20, 1997   Decided: October 28, 1997

Before HALL and MURNAGHAN, Circuit Judges, and PHILLIPS, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Russell Lee Gainey, Appellant Pro Se. James Stuart Gilmore, III, Attorney General, Richmond, Virginia, for Appellee.

PER CURIAM:

Appellant appeals from the district court's orders dismissing without prejudice his complaint for failing to comply with the court's order under Fed. R. Civ. P. 41(b), and denying his motion for reconsideration. We have reviewed the record and the district court's opinion dismissing the action without prejudice under Rule 41(b) and find no abuse of discretion. Accordingly, we affirm on the reasoning of the district court. <u>Gainey v. Angelone</u>, No. CA-97-65-R (E.D. Va. Apr. 2, 1997).

Although we note that the district court should have construed Appellant's motion for reconsideration as a motion filed under Fed. R. Civ. P. 59(e), <u>see</u> <u>Dove v. CODESCO</u>, 569 F.2d 807, 809 (4th Cir. 1978), we find no abuse of discretion in the denial of relief. Appellant neither challenged the propriety of the district court's dismissal of his action, nor did he state a ground for relief under Rule 59(e). <u>See</u> <u>Collison v. International Chem. Workers Union, Local 217</u>, 34 F.3d 233, 236 (4th Cir. 1994). Accordingly, we affirm.

We deny Appellant's motions for oral argument and for an extension of time to order a transcript and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid in the decisional process.

<u>AFFIRMED</u>